
From: Andrew Schiffrin
Sent: Tuesday, January 21, 2014 3:25 PM
To: CEQA Guidelines
Subject: CEQA GUIDELINES UPDATE

To Whom It May Concern -

Thank you for the opportunity to respond to "Possible Topics to be Addressed in the 2014 CEQA Guidelines Update." At this time I only have comments on two sections discussed in the document:

1. Section 15063 (Initial Study) - By allowing the applicant to review an administrative draft Initial Study for the accuracy of the project description and mitigation measures, will this cause the Administrative Draft Initial Study to become a public document under the Public Records Act?

- In addition, I think it is important to clarify that the rationale for permitting the applicant to review the proposed mitigation measures in the Initial Study is because the measures will be incorporated in a Mitigated Negative Declaration and the applicant must agree to these mitigations in order for the Neg. Dec. to be approved. CEQA presupposes that an applicant has agreed to mitigation measures before a Mitigated Negative Declaration is released and, therefore, it is assumed that the applicant must have knowledge of them in advance.

2. Section 15083 (Early Public Consultation) - The proposal for this section is to allow applicants to review for accuracy the project descriptions and mitigation measures in an Administrative Draft EIR. I strongly object to this proposed change for the following reasons:

- An applicant should provide the lead agency with an accurate projection description as part of the original application. Any changes to the project description by the applicant should be presented to the lead agency as soon as possible. The lead agency has the responsibility to prepare a Draft EIR based on an accurate project description. This should be known before the Administrative Draft EIR is prepared. It is the responsibility of the applicant to assure that the lead agency has an accurate project description. It should not be the lead agency's responsibility to have the applicant review the Administrative Draft EIR for accuracy.

- While the mitigation measures in a Mitigated Negative Declaration must be agreed to by the applicant, this is not the case with an EIR. The mitigation measures in an EIR must reflect the independent judgement of the lead agency. As part of the comment period on a Draft EIR, an applicant has the opportunity to present evidence explaining why a particular mitigation measure is not feasible or appropriate. This becomes part of the public record and can be responded by the public before the lead agency decision makers certify the EIR. It is inappropriate, and potentially undermines the integrity of the EIR process, to allow the applicant to comment on proposed mitigation measures without the public having a similar right.

- There was a case in Santa Cruz County several years ago where County staff wanted to allow a project applicant to review an Administrative Draft EIR for accuracy. Opponents of the project got wind of this proposal and argued that, if the applicant could review the Administrative Draft, under the Public Records Act, they should be allowed to review it as well. The County Counsel

ultimately determined that if the County allowed one party to see the Administrative Draft, it then became a public document and had to be made available to anyone who wanted to review it. As a result, Administrative Draft EIRs are kept as internal documents only. I question whether CEQA Guideline provisions can override the Public Records Act.

Again, thank you for the opportunity to comment on the proposed Update and I hope you find my comments of value.

Sincerely,

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